

COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FOURTH APPELLATE DISTRICT  
DIVISION ONE  
December 8, 2003

Court convened at 9:00 a.m.

Present: The Honorable Patricia Benke, Acting Presiding Justice, and The Honorable Associate Justices Alex McDonald and James McIntyre  
Clerk: D. E. Moore

**D041126          Panther v. Financial Asset Management Foundation**

Cause called on merits. Martin J. Mullen, Esq. argued for appellant. Steve A. Micheli, Esq. argued for respondent. Mr. Mullen replied. Cause submitted.

**D041199          Residential Capital, LLC v. Do**

Cause called on merits. Michael M. Wintringer, Esq. argued for appellant. David W. Baumgarten, Esq. argued for respondent. Mr. Wintringer replied. Cause submitted.

Court recessed at 10:05 a.m. to change panel members. New panel members: The Honorable Gilbert Nares, Acting Presiding Justice, and the Honorable Associate Justices Alex McDonald and James McIntyre

**D042335          Jones v. Superior Court/People-RPI**

Matter called on merits. John G. Phillips, Esq. argued for petitioner. Laura E. Tanney, Deputy District Attorney argued for real party in interest. Mr. Phillips replied. Matter to be submitted at a later date.

Court recessed at 10:33 a.m. until 1:30 p.m.

Court reconvened at 1:30 p.m.

Present: The Honorable Patricia Benke, Acting Presiding Justice, and The Honorable Associate Justices Alex McDonald and James McIntyre  
Clerk: D. E. Moore

**D041304          Haines v. City of San Diego et al.**

Cause called on merits. Juan Moreno Haines argued for appellant in pro per, telephonically. John F. Kirk, Deputy City Attorney argued for respondent. Mr. Haines replied. Cause submitted.

Court recessed at 1:41 p.m. to change panel members. New panel members: The Honorable Judith McConnell, Presiding Justice, and The Honorable Associate Justices Patricia Benke and Alex McDonald  
Clerk: D. E. Moore

**D040744          People v. McManama**

Cause called on merits. James H. Pasto, Esq. argued for appellant. Gil Gonzalez, Deputy Attorney General argued for respondent. Mr. Pasto replied. Cause submitted.

COURT OF APPEAL OF THE STATE OF CALIFORNIA  
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DIVISION ONE  
December 8, 2003 (Continued)

**D041876        Atiga v. The San Diego Union-Tribune et al.**

Cause called on merits. Thor O. Emblem, Esq. argued for appellant. Gregory D. Roper, Esq. argued for respondent. Mr. Emblem replied. Cause submitted.

Court recessed at 2:45 p.m. until Tuesday, December 9, 2003 at 9 a.m.

**D043288        In re Kness on Habeas Corpus**

The petition is denied.

**D042485        Kalench v. Todd**

Appellant has failed to file a brief after notice given pursuant to California Rules of Court, rule 17(a). The appeal is dismissed.

**D043284        Lasher v. Superior Court of San Diego County/Lasher**

The petition is denied.

**D043290        In re Liban on Habeas Corpus**

The petition is denied.

**D041929        Doubletree Golf Resort et al. v. Workers' Compensation Appeals Board/Martines**

At the request of petitioners, the petition for writ of review is dismissed.

**D043335        Scott v. Superior Court of San Diego County/Halfaker**

The petition is denied.

COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FOURTH APPELLATE DISTRICT  
DIVISION ONE  
December 9, 2003

**D041305        Alvarado v. County of Imperial**

The judgment on jury verdict is reversed and the trial court is directed to enter a JNOV in favor of the appellant County. Each party shall bear its own costs on appeal. Huffman, Acting P.J.;  
We Concur: McDonald, J., Aaron, J.

**D040430        People v. Nissen**

The judgment is affirmed. Nares, J.; We Concur: Huffman, Acting P.J., Aaron, J. (opinion)

**D042014        People v. Bridgett**

The judgment is affirmed. Huffman, J.; We Concur: McConnell, P.J., Haller, J.

**D039474        People v. Futrell**

The judgment is affirmed. CERTIFIED FOR PARTIAL PUBLICATION. Huffman, Acting P.J.;  
We Concur: Nares, J., McIntyre, J.

Court convened at 9:00 a.m.

Present: The Honorable Terry O'Rourke, Acting Presiding Justice, and The Honorable Associate Justices Cynthia Aaron and Joan Irion  
Clerk: D.E. Moore

**D040366        People v. David**

Cause called on merits. Jerome P. Wallingford, Esq. argued for appellant. Kelley Johnson, Deputy Attorney General argued for respondent. Cause submitted.

**D040535        People v. Escobar**

Cause called on merits. Gary E. Nelson, Esq. argued for appellant. Lisa Jacobsen, Deputy Attorney General argued for respondent. Mr. Nelson replied. Cause submitted.

**D041112        People v. Alvarez**

Cause called on merits. Howard C. Cohen, Esq. argued for appellant. Marilyn George, Deputy Attorney General argued for respondent. Mr. Cohen replied.

Court recessed at 10:06 a.m. to change panel members. New panel members: The Honorable Patricia Benke, Acting Presiding Justice, and The Honorable Associate Justices Gilbert Nares and Terry O'Rourke

**D038404        Ellis v. Louie**

Cause called on merits. Mark Vranjes, Esq. argued for appellant/cross-respondent. Mary C. Downey, Esq. argued for respondent/cross-appellant. Mr. Vranjes replied. Cause submitted.

Court recessed at 10:36 a.m. until 1:30 p.m.

Court reconvened at 1:30 p.m.

COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FOURTH APPELLATE DISTRICT  
DIVISION ONE  
December 9, 2003 (Continued)

Present: The Honorable Judith McConnell, Presiding Justice, and The Honorable Associate Justices  
Judith Haller and Alex McDonald  
Clerk: D. E. Moore

**D040500        Hemingway v. Desert Pacific Council**

Cause called on merits. Robert H. Lynn, Esq. argued for appellant. Susan L. Oliver, Esq. argued for respondent. Mr. Lynn replied. Cause submitted.

**D040721        Supralife International v. Whiting et al.**

Cause called on merits. Dan Lawton, Esq. argued for appellant. Margaret A. Pitchkolan, Esq. argued for respondent. Mr. Lawton replied. Cause submitted.

**D040854        People v. R. J. Reynolds Company**

Cause called on merits. Jeh Charles Johnson, Esq. argued for appellant. Karen Leaf, Deputy Attorney General argued for respondent. Alan Lieberman, Deputy Attorney General was present in oral argument for respondent, but did not argue. Mr. Johnson replied. Cause submitted.

Court recessed at 3:26 p.m. until Wednesday, December 10, 2003 at 9 a.m.

**D043207        Atta v. Cooney et al.**

Pursuant to California Rules of Court, rule 8, the appeal filed October 21, 2003, is dismissed for appellant's failure to timely designate the record and for failure to file a Civil Case Information Statement and copy of judgment.

COURT OF APPEAL OF THE STATE OF CALIFORNIA  
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DIVISION ONE  
December 10, 2003

**D041825        People v. Chaplin**

The convictions are affirmed. The sentence is reversed and this matter is remanded for resentencing consistent with this opinion. McConnell, P.J.; We Concur: Benke, J., Huffman, J.

**D041602        In re Marriage of Ross and Kelley**

The portions of the December 27 order that terminated Duckhams' stipulated visitation rights are reversed. In all other respects, the order is affirmed. The matter is remanded to the trial court with directions to vacate the portions of the December 27 order that terminated the Duckhams' stipulated visitation rights (paragraphs 1.B & 1.C at p.2), and to enter a new order that adopts in full recommendations Nos. 6 and 7 set forth in the FCS report. The appeal from the court's denial of the motion for reconsideration is moot. Each party to bear own costs on appeal. CERTIFIED FOR PUBLICATION. Nares, Acting P.J.; We Concur: McIntyre, J., O'Rourke, J.

**D043228        Pouliot v. Superior Court of San Diego County/Graham et al.**

The petition is denied.

Court convened at 9:00 a.m.

Present: The Honorable Gilbert Nares, Acting Presiding Justice, and The Honorable Associate Justices Terry O'Rourke and Joan Irion  
Clerk: D. E. Moore

**D040124        Warner v. Breg, Inc., et al.**

Cause called on merits. Laura G. Schaefer, Esq. argued for appellant. Marc O. Stern, Esq. was present in oral argument for appellant, but did not argue. Paul Johnson, Esq. argued for respondent. Ms. Schaefer replied. Cause submitted.

**D041232        City of San Diego v. Pacific Beach Recreation Council, Inc., et al.**

Cause called on merits. Jerome E. Eggers, Esq. argued for appellant. Grant R. Telfer, Deputy City Attorney argued for respondent. Mr. Eggers replied. Cause submitted.

Court recessed at 9:34 a.m. to change panel members. New panel members: The Honorable Richard Huffman, Acting Presiding Justice, and The Honorable Associate Justices Gilbert Nares and Joan Irion

**D040957        Denardi Equipment Company, Inc. v. Construction Notice Services, Inc.**

Cause called on merits. William Nolan, Esq. argued for appellant. David John Barnier, Esq. argued for respondent. Mr. Nolan replied. Cause submitted.

**D040993        Morris v. Employers Reinsurance Corporation**

Cause called on merits. Shannon Gallagher, Esq. argued for appellant. James J. Reynolds, Esq. argued for respondent. Mr. Gallagher replied. Cause submitted.

Court recessed at 10:33 a.m. until 1:30 p.m.

COURT OF APPEAL OF THE STATE OF CALIFORNIA  
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DIVISION ONE  
December 10, 2003 (Continued)

Court reconvened at 1:30 p.m.

Present: The Honorable Judith McConnell, Presiding Justice, and The Honorable Associate Justices  
Judith Haller and Alex McDonald  
Clerk: D. E. Moore

**D042058        Dysart et al. v. Superior Court/Lampco Productions, Inc.-RPI**

Matter called on merits. R. J. Coughlan, Jr., Esq. argued for petitioner. Burton Charles Jacobson, Esq. argued for real party in interest. Mr. Coughlan replied. Matter submitted.

**D042600        Ebbert v. Superior Court/City of San Diego-RPI**

Matter called on merits. Matthew Braner, Esq. argued for petitioner. Simon Silva, Deputy City Attorney argued for respondent. Mr. Braner replied. Matter submitted.

**D042251        The Copley Press, Inc. v. Superior Court/County of San Diego et al.-RPI**

Matter called on merits. Guylyn R. Cummins, Esq. argued for petitioner. William Harold Songer, Deputy County Counsel argued for respondent. Richard Pinckard, Esq. argued for real party in interest, San Diego Deputy Sheriffs' Association, etc. James M. Chapin, Esq. argued for the amicus. Ms. Cummins replied. Matter submitted.

Court recessed at 3:06 p.m. until Thursday, December 11, 2003 at 9 a.m.

**D043077        Pepsi Bottling Group v. Workers' Compensation Appeals Board and Richard Dutra**

The petition is denied.

COURT OF APPEAL OF THE STATE OF CALIFORNIA  
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**D042625        Anand v. Prime Car Wash**

Upon written stipulation filed by the parties to the appeal, the appeal is dismissed and the remittitur is ordered to issue immediately (Cal. Rules of Court, rule 20 (c)(2)).

**D040996        Legion for the Survival of Freedom, Inc. v. Liberty Lobby, Inc.**

That portion of the court's assignment order purporting to compel payment of probate proceeds by nonresident third persons or purporting to place a lien on out-of-state probate proceeds is reversed. The order is otherwise affirmed. The parties shall bear their own costs on appeal. O'Rourke, J.; We Concur: Haller, Acting P.J., McDonald, J.

**D041275        Ridgway v. Diaz**

The order is affirmed. Huffman, Acting P.J.; We Concur: McDonald, J., Aaron, J.

**D039883        Loera v. Imperial County Sheriff's Department**

The judgment is affirmed. The Department is awarded costs on appeal. McConnell, P.J.; We Concur: Huffman, J., McDonald, J.

Court convened at 9:00 a.m.

Present: The Honorable Richard Huffman, Acting Presiding Justice, and The Honorable Associate Justices Gilbert Nares and Terry O'Rourke

**D041197        Gladstone v. Gladstone**

Cause called on merits. Stephen Temko, Esq. argued for appellant. Richard Isaac Sherman, Esq. argued for respondent. Cause submitted.

**D040637)        Rancho Santa Fe Association v. Dolan-King**

**D041486)        Rancho Santa Fe Association v. Dolan-King**

Cause called on merits. Robert R. Massey, Esq. argued for appellant. Michael J. Hickman, Esq. argued for respondent. Mr. Massey replied. Cause submitted.

**D041061        Taylor v. Mr. T.**

Cause called on merits. Vanessa Taylor, argued for appellant in pro per. Claudia Ribet, Esq. argued for respondent. Ms. Taylor replied. Cause submitted.

Court recessed at 10:09 a.m. to change panel members. New panel members: The Honorable Richard Huffman, Acting Presiding Justice, and The Honorable Associate Justices Terry O'Rourke and Joan Irion

**D041549        Klaas v. Rational Software Corporation**

Cause called on merits. Veronica Marie Aguilar, Esq. argued for appellant. William E. Hannum, Esq. argued for respondent. Cause submitted.

Court recessed at 10:16 a.m. until 1:30 p.m.

COURT OF APPEAL OF THE STATE OF CALIFORNIA  
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December 11, 2003 (Continued)

Court reconvened at 1:30 p.m.

Present: The Honorable Richard Huffman, Acting Presiding Justice, and The Honorable Associate Justices Cynthia Aaron and Joan Irion  
Clerk: D. E. Moore

**D039913        People v. McIntire**

Cause called on merits. Harry Zimmerman, Esq. argued for appellant. Karl Terp, Deputy Attorney General argued for respondent. Mr. Zimmerman replied. Cause submitted.

Court recessed at 1:49 p.m. to change panel members. New panel members: The Honorable Gilbert Nares, Acting Presiding Justice, and The Honorable Associate Justices Cynthia Aaron and Joan Irion

**D039721        People v. Hooper**

Cause called on merits. Laura Gordon, Esq. argued for appellant. Elizabeth A. Hartwig, Deputy Attorney General argued for respondent. Ms. Gordon replied.

Court recessed at 2:01 p.m. to change panel members. New panel members: The Honorable Richard Huffman, Acting Presiding Justice, and The Honorable Associate Justices Gilbert Nares and Cynthia Aaron

**D040696        Doung v. Le et al.**

Cause called on merits. Daniel Joseph Winfree, Esq. argued for appellant. Priscella F. Slocum, Esq. argued for respondent. Mr. Winfree replied. Cause submitted.

**D041848        Gallerstein v. Acker**

Cause called on merits. John J. Freni, Esq. argued for appellant. John S. Adler, Esq. argued for respondent. Mr. Freni replied. Cause submitted.

**D040970        General Atomics v. County of San Diego**

Cause called on merits. Andrew J. Freeman, Deputy County Counsel argued for appellant. Sean Flavin, Esq. argued for respondent. Mr. Freeman replied. Cause submitted.

**D040356        Wells et al. v. Wildish et al.**

Cause called on merits. Ian Feldman, Esq. argued for appellant, Wildish. Daniel R. Wildish, Esq. argued for appellant, Kipp. Michael Vivoli, Esq. argued for respondent. Mr. Feldman replied. Mr. Wildish replied. Cause submitted.

Court recessed at 3:28 p.m. until Friday, December 12, 2003 at 9 a.m.

**D043293        In re Moreno on Habeas Corpus.**

The petition is denied.

COURT OF APPEAL OF THE STATE OF CALIFORNIA  
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DIVISION ONE  
December 11, 2003 (Continued)

**D040819        Dez Construction v. Calexico Unified School District/Denton**

The judgment is reversed and the matter is remanded with directions that if Dez files a motion for attorney fees under Code of Civil Procedure section 1021.5 within 30 days after issuance of the remittitur, the superior court shall decide whether Dez is entitled to an award of attorney fees under Code of Civil Procedure section 1021.5 and, if so, award an appropriate amount to it. Dez shall recover its costs on appeal. McDonald, J.; We Concur: Huffman, Acting P.J., Irion, J.

**D042101        People v. Delander**

The judgment is affirmed. McDonald, J.; We Concur: McConnell, P.J., Haller, J.

**D040393        Jennings v. Palomar Pomerado Health Systems, Inc., et al.**

The judgment is affirmed. Jennings's request for sanctions is denied. Defendants are entitled to costs on appeal. McDonald, J.; We Concur: Haller, Acting P.J., O'Rourke, J.

**D043249        Hamilton v. Superior Court of Imperial County/People**

The petition is denied.

**D043258        In re Davis on Habeas Corpus**

The petition is denied.

**D043292        In re Agrio on Habeas Corpus**

The petition is denied without prejudice to petitioner filing a petition with a sufficient record to review the Board's decision de novo.

**D043238        In re Roquemore on Habeas Corpus**

The petition is denied.

**D040571        People v. West**

The request for publication of the opinion is denied.

**D043306        Accent Mobile Homes of San Diego, Inc., et al. v. Superior Court of San Diego County/Monterey Bay Investment Corp., et al.**

The petition is denied.

COURT OF APPEAL OF THE STATE OF CALIFORNIA  
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**D042559        In re L.S., a Juvenile**

The judgment is affirmed. McDonald, J.; We Concur: McConnell, P.J., Aaron, J.

**D041023        People v. Johnson**

The portions of the judgment imposing a restitution fine in the amount of \$800 and a suspended parole revocation fine also in the amount of \$800 are modified (1) to reinstate the \$200 restitution fine the court originally imposed under section 1202.4, subdivision (b); and (2) to reduce from \$800 to \$200 the suspended parole revocation fine imposed under section 1202.45. In all other respects, the judgment is affirmed. The clerk of the superior court is directed to prepare an amended abstract of judgment in accordance with this disposition and deliver it to the Department of Corrections. CERTIFIED FOR PUBLICATION. Nares, J.; We Concur: Huffman, Acting P.J., McIntyre, J.

Court convened at 9:00 a.m.

Present: The Honorable Judith McConnell, Presiding Justice, and The Honorable Associate Justices Alex McDonald and James McIntyre

Clerk: D. E. Moore

**D042465        Miller v. Superior Court/People-RPI**

Matter called on merits. Michael J. McCabe, Esq. argued for petitioner. Michael Zachry, Deputy District Attorney argued for real party in interest. Mr. McCabe replied. Matter submitted.

Court recessed at 9:22 a.m. to change panel members. New panel members: The Honorable Judith McConnell, Presiding Justice, and The Honorable Associate Justices Judith McConnell and James McIntyre

**D041811        Gray Cary Ware & Freidenrich v. Vigilant Insurance Company**

Cause called on merits. Robert C. Longstreth, Esq. argued for appellant. Jaymeson Pegue, Esq. argued for respondent. Mr. Longstreth replied. Cause submitted.

**D040834        Onceblue Enterprises, Inc. v. Kiewit Pacific Company, et al.**

Cause called on merits. John C. Goodman, Esq. argued for appellant. Leroy M. Gire, Esq. argued for respondent. Mr. Goodman replied. Cause submitted.

Court recessed at 10:10 a.m. until 1:30 p.m.

Court reconvened at 1:30 p.m.

Present: The Honorable Judith Haller, Acting Presiding Justice, and The Honorable Associate Justices Alex McDonald and James McIntyre

Clerk: D. E. Moore

**D040250        McHale v. Wills**

Cause called on merits. David Brodie, Deputy City Attorney argued for appellant. Matthew Nelson Lees, Esq. argued for respondent. Mr. Brodie replied. Cause submitted.

COURT OF APPEAL OF THE STATE OF CALIFORNIA  
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DIVISION ONE  
December 12, 2003 (continued)

Court recessed at 1:48 p.m. to change panel members. New panel members: The Honorable Patricia Benke, Acting Presiding Justice, and The Honorable Associate Justices Judith Haller and James McIntyre

**D040343        Pedrin v. Civil Constructors Corporation**

Cause called on merits. Robert C. Carlson, Esq. argued for appellant. Cynthia R. Chihak, Esq. argued for respondent. Cause submitted.

Court adjourned at 2 p.m..

**D043330        In re Darion F., a Juvenile**

The appeal is dismissed as untimely.

**D040811        Andrade v. The City of San Diego**

The judgment is affirmed. McDonald, J.; We Concur: McConnell, P.J., O'Rourke, J.

**D040351        Norma Guerrero, a Minor, etc., et al. v. South Bay Union School**

The judgment is affirmed. CERTIFIED FOR PUBLICATION. Huffman, Acting P.J.; I Concur: Nares, J.; I Dissent: Aaron, J. (opinion)

**D043044        Redevelopment Agency of the City of San Diego v. Bahira Attisha et al.**

The Court takes judicial notice of the documents filed with Respondent's motion to dismiss the appeal. Based on Appellants' failure to file a timely notice of appeal and failure to respond to this court's notice that they were in default for failing to file a Civil Case Information Statement, the appeal is dismissed.

**D041616        People v. Valadez**

The judgment is affirmed. Aaron, J.; We Concur: Huffman, Acting P.J., McIntyre, J.

**D042888        Kimberly H. v. Superior Court of San Diego County/San Diego County Health and Human Services Agency**

The petition is denied. O'Rourke, J.; We Concur: Haller, Acting P.J., Aaron, J.

**D043356        Jesperson v. Superior Court of San Diego County**

The motion is granted. The original petition and exhibits and all copies shall remain under seal.

**D043295        Smith v. Superior Court of San Diego County/People**

The petition is denied.